

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

DeYOUNG LEMONS,

Plaintiff,

v.

TEXAS DEPARTMENT OF CRIMINAL
JUSTICE,

Defendant.

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CIVIL ACTION NO. 5:17-CV-00141-RWS

ORDER

The Plaintiff DeYoung Lemons, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. § 1983 complaining of alleged violations of his constitutional rights. This Court referred the case to the United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The Magistrate ordered Plaintiff to either pay the statutory filing fee or submit an application for leave to proceed *in forma pauperis* accompanied by a certified inmate trust account statement, as required by 28 U.S.C. § 1915(b). Docket No. 2. By separate order, the Magistrate Judge also ordered Plaintiff to file an amended complaint setting out his claims with more factual specificity. Docket No. 3. Plaintiff received copies of these orders but did not comply with either. Docket No. 4.

After review of the pleadings and record the Magistrate Judge issued a Report and Recommendation (Docket No. 5) stating that the lawsuit could be dismissed without prejudice for failure to prosecute or for failure to obey an order of the Court. The Magistrate Judge also stated the lawsuit failed to state a claim on its face because the sole named defendant is the Texas

Department of Criminal Justice, which is an agency of the State of Texas and is thus shielded from suit by Eleventh Amendment immunity. *Aguilar v. Texas Dep't of Criminal Justice*, 160 F.3d 1052, 1054 (5th Cir. 1998). The Magistrate Judge further recommended the lawsuit be dismissed without prejudice for failure to state a claim upon which relief may be granted.

Plaintiff received a copy of this Report on April 29, 2019 but filed no objections thereto. Docket No. 6. Accordingly, he is not entitled to *de novo* review by the District Judge of those findings, conclusions and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto. Assoc.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).


Nonetheless, the Court has reviewed the pleadings in the cause and the Report of the Magistrate Judge and agrees with the Report of the Magistrate Judge. *See United States v. Raddatz*, 447 U.S. 667, 683 (1980) (“[T]he statute permits the district court to give to the magistrate’s proposed findings of fact and recommendations ‘such weight as [their] merit commands and the sounds discretion of the judge warrants’”) (quoting *Mathews v. Weber*, 23 U.S. 261, 275 (1976)). It is accordingly

ORDERED the Report of the Magistrate Judge (Docket No. 5) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** for failure to state a claim upon which relief may be granted. It is finally

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

So ORDERED and SIGNED this 9th day of October, 2019.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE